

### **REMARKS**

Upon entry of the foregoing Amendment, claims 1, 2, 5, 7-9, 11-17, 33-39, and 41-43 are pending. Claims 1, 5, 9, 33, 34, 41, and 43 have been amended; claims 4, 6, and 40 have been cancelled without prejudice or disclaimer. No new claims are added. Amendments to the claims are supported by the specification as filed.

In view of the foregoing Amendment and the following Remarks, allowance of the pending claims is requested.

### **Rejections Under 35 U.S.C. §102**

The Examiner has rejected claims 1, 2, 4-9, and 11-17 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,324,165 to Fan et al. ("Fan"). The Examiner has also rejected claims 1, 2, 6-9, 11-17, 33-37, 42, and 43 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 5,872,769 to Caldara et al. ("Caldara"). Applicants traverse these rejections because neither Fan nor Caldera, alone or in combination with one another disclose, teach, or suggest all of the features of the claimed invention.

For example, claim 1 recites: "*a buffer manager... to adjust at least one of the first capacity of the first buffer memory or the second capacity of the second buffer memory...*" Claims 9, 33, and 43 include similar features. As discussed previously, both Fan and Caldara fail to disclose adjusting the amount of information that can be stored in a particular buffer. As such, both Fan and Caldera fail to disclose adjusting buffer capacities.

For at least this reason, Fan or Cladara, either alone or in combination with one another, fail to disclose, teach, or suggest all of the features of claims 1, 9, 33, and 43. Thus, the Examiner's rejections thereto must be withdrawn. Claims 2, 5, 7, 8, 34-39, and 41-42 depend from and add features to one of claims 1, 9, or 33. Thus the rejections of these claims are likewise improper for at least the reasons set forth above and must be withdrawn. Claims 4 and 6 have been cancelled without prejudice or disclaimer, solely for the purpose of expediting prosecution of the application, therefore the rejections thereto are moot.

The Examiner has also rejected claims 1, 9, 33, and 43 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,581,544 to Hamada et al. ("Hamada"). Applicants traverse these rejections because Hamada fails to disclose all of the features of the claimed invention. However, solely to expedite prosecution of the application, Applicants have amended claims 1, 9, 33, and 43 to clarify the features of the invention.

For example, claim 1, as amended, recites:

a buffer manager...to monitor a measure of quality of a plurality of network characteristics according to a predetermined energy function, the plurality of network characteristics including at least a measure of loss of communication units in the buffer element and a measure of delay of communication units in the buffer element, to propose adjustments to at least one of the first capacity and the second capacity by iterative mutation of at least one of the first capacity and the second capacity, and to adjust at least one of the first capacity of the first buffer memory or the second capacity of the second buffer memory upon determining a proposed adjustment that provides an improvement to the measure of quality of the plurality of network characteristics according to the energy function.

Claims 9 and 33 include similar features. The portions of Hamada relied upon by the Examiner do not disclose a buffer manager that monitors a measure of quality of a plurality of network characteristics according to an energy function. Nor do these portions of Hamada disclose adjusting buffer capacities upon determining a proposed adjustment that provides an improvement to the measure of quality of the plurality of network characteristics according to the energy function. Rather, Hamada deals with calculating "a probability distribution of a cell length in a buffer," evaluation quality of service "on a priority class basis," and optimizing "call admission control and priority control." Hamada, abstract.

For at least this reason, the portions of Hamada relied upon by the Examiner fails to disclose all of the features of claims 1, 9, and 33. Thus, the Examiner's rejections thereto must be withdrawn.

Furthermore, claim 43, as amended, recites a switch comprising a plurality of ports, wherein each of the plurality of ports comprises multiple buffer capacities that can be adjusted by a buffer manager. Claims 12, 13, 15, and 16 relate to similar features.

By providing ports, each with their own adjustable-capacity multiple-buffer capability, complex quality of service and buffer capacity management is enabled within a single switch. Neither Fan, Caldera, or Hamada, either alone or in combination with one another, teach, suggest, or disclose these features of the invention. As such, for at least this reason, the rejections to claims 12, 13, 15, 16, and 43 are improper and should be withdrawn.

**Rejections Under 35 U.S.C. §103**

The Examiner has rejected claims 4, 5, 40 and 41 under 35 U.S.C. §103(a) as allegedly unpatentable over Caldera in view of U.S. Patent No. 6,069,894 to Holander et al. ("Holander"). The Examiner has also rejected claims 38 and 39 under 35 U.S.C. §103(a) as allegedly unpatentable over Cladara in view of U.S. Patent No. 5,555,265 to Kakuma et al. ("Kakuma"). Applicants traverse these rejections for at least the reason that the Examiner has failed to make a *prima facie* case of obviousness.

As discussed above, Caldara fails to disclose all of the features of claims 1 and 33. The portions of Holander and Kakuma relied upon by the Examiner do not cure the deficiency of Caldara. Claims 5, 38, 39, and 41 depend from add features to one of claims 1 and 33. Therefore, the rejections of claims 5, 38, 39 and 41 are improper and must be withdrawn. Claims 4 and 40 have been cancelled without prejudice or disclaimer, solely for the purpose of expediting prosecution of the application. Thus, the rejections thereto are moot.

Furthermore, the Examiner has failed to provide proper motivation to combine Holander or Kakuma with Caldara. In the rejection, the Examiner states: "it would have been obvious to one having ordinary skill in the art at the time of the invention was made to provide hill climbing search process, as taught by Holander in the system of Caldara, so that it would avoid overload situation and provide load balancing in accordance with optimization method [sic]." Aug. 2006 Office Action, pgs 9-10. The Examiner also states: "it would have been obvious to one having ordinary skill in the art at the time of the invention was made to provide determining discard priority for each quality class, as taught by Kakuma in the system of Caldara, so that it would prevent

each service from adversely affecting other service and allow the quality of service to be easily controlled [sic]. Id. pgs. 10-11. However, in both cases, the Examiner's recited motivation merely states what the benefit of the combination of the disclosures may provide. In other words, the Examiner has focused on the result of the combination of Caldara and Holander or Kakuma, but has not provided a legally proper teaching, suggestion, or motivation to combine the two references.

Having provided no motivation to combine or modify the references, other than to state what a benefit of the combination may be, it appears as though the Examiner has engaged in hindsight reconstruction to pick and choose among separate disclosures to allegedly arrive at the claimed invention. For at least this reason, the rejection of claims 5, 38, 39 and 41 is improper and must be withdrawn.

**CONCLUSION**

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

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